

## **MINUTES**

### **MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION CONFERENCE COMMITTEE ON HOUSE AMENDMENTS TO SENATE BILL 242**

**Call to Order:** By **CHAIRMAN DALE MAHLUM**, on April 9, 2001 at 2:30 P.M. and on April 10, 2001 at 2:00 in Room 350 Capitol.

#### **ROLL CALL**

**Members Present:**

Sen. Dale Mahlum, Chairman (R)  
Rep. Dick Haines, Vice Chairman (R)  
Rep. Sylvia Bookout-Reinicke (R)  
Sen. Jerry O'Neil (R)  
Sen. Ken Toole (D)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Mary Vandenbosch, Legislative Branch  
Mary Gay Wells, Committee Secretary

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Executive Action: SB 242 No Further Action

#### **HEARING ON SB 242**

**Comments and Questions from Committee Members and Responses:**

**CHAIRMAN DALE MAHLUM** opened the meeting. Senate Bill 242 was introduced by **SEN. JERRY O'NEIL and SEN. BOB KEENAN**. House amendments had been added which were not accepted by the Senate. He asked for comments from the committee.

**REP. DICK HAINES** moved to pass the bill out of the conference committee as it had come from the House with their amendments.

**Discussion:**

**SEN. O'NEIL** would accept the above motion. One issue was the retroactive clause. He believed that clause, as it came from the House, was adequate and the building permit investigations that might be in the process could be completed by rule rather than by code. The Dept. of Commerce has the power to complete them. The bill as it stood now was good. The jurisdiction of the county was somewhat confusing to some people. The method on how to adopt is in the bill. That should not be a problem. **SEN. MIKE HALLIGAN** had a problem with the bill on the Senate floor. He was concerned that getting 40% of the electors to opt out of the building codes was too onerous. He wanted that reduced to 20%. Forty percent would be a better number of people to represent those who do want to have building codes. They would show they don't want to opt out of it.

**SEN. KEN TOOLE** wanted to know, under the county jurisdictional area on page 2, line 2, if any flexibility was allowed to have different standards for different kinds of areas, differences such as soil, traffic, etc. **SEN. O'NEIL** offered that his understanding was the building codes required footings to be inspected. If there was soft soil, there would be a wider footing. Building codes address all kinds of soils.

**SEN. TOOLE** asked if the county, under this definition, would be able to have any differences, anywhere for any reason. Jurisdictional area means the entire county. **SEN. O'NEIL** answered that this was building codes not zoning and planning.

**REP. JOE TROPILA** questioned if this included farms and ranches in the county. **SEN. O'NEIL** said that if the county does adopt building code areas, then farms and ranches could be part of that. Every resident in the county would be included. If everyone has a stake in the building codes, everyone will demand codes that can be lived with.

**REP. HAINES** stated that there is an appeal process in the bill that would address concerns toward farms and ranches, etc. If someone feels they are being unjustly regulated, they can appeal as stated on page 4, Section 2.

**CHAIRMAN MAHLUM** handed out some suggested amendments **EXHIBIT (ccs80sb0242a01)**, from the Dept. of Commerce, Building Codes Division. Basically, they are talking about what the

state could do. He asked **Eric Fehlig, Attorney, Building Codes Division, Dept. of Commerce** to comment.

**Mr. Fehlig** stated the Dept. had prepared three different amendments. He had segregated them and had given an explanation of what the purpose was for each amendment. He explained each just as it was written (**EXHIBIT 1**).

**CHAIRMAN MAHLUM** spoke and announced that amendment #4 was outside the scope of the title. It could go into a free conference committee. It was not entered into the hearing.

**SEN. O'NEIL** asked if **Bruce Simon** could address the amendments.

**REP. SYLVIA BOOKOUT-REINICKE** first had a couple of questions. On amendment #3, the issue of a city imposing its regulations on county residents, she asked if this amendment resolves that whole problem. **Mr. Fehlig** answered no. The basic component of the bill is the removal of the authority of the cities to go beyond their city limits. That is accomplished by the bill. Because that is accomplished by the bill, there would be no necessity for extra hoops for the county to jump through to adopt building codes.

**REP. BOOKOUT-REINICKE** questioned amendment #2 in the description that reads the state cannot step in and finish the inspections. Is the Dept. saying they don't trust the city inspectors. **Mr. Fehlig** said it was a matter of the state stepping in and taking on a liability for which they had no first hand knowledge.

**REP. HAINES** asked how many cities in the state have not taken advantage of the donut law. **Mr. Fehlig** thought it would be easier to say which cities have taken advantage. They are Columbia Falls, Whitefish, Kalispell, Missoula, Bozeman, Billings, Miles City and Fort Benton.

**REP. HAINES** offered that would it be fair to say the great preponderance of the municipalities of Montana had not used the donut law. **Mr. Fehlig** answered yes, in terms of numbers.

**REP. HAINES** felt this seemed to be an argument with no substance.

**Bruce Simon, Billings.** In regard to amendment #1, he did not believe the committee had the authority to address it because it would be a substantive amendment and not in the scope of a conference committee. Amendment #2, retroactive clause, is critical to the issue. Experience had shown that cities who had that jurisdiction simply said with no retroactive applicability clause, they don't have to ask the county for permission. The

Dept. could adopt a rule to allow cities to continue to take care of the building permits that they had already issued. Amendment #3 eliminates the requirement for the counties to go through a procedure to create fire service districts, etc. These regulations that currently stand, simply mirror the public participation kinds of requirements that are in other areas of statutes. It was merely complying with Montana Constitution which gives the public the right to participate in governmental decisions before they are made.

**SEN. TOOLE** questioned the first amendment and asked for clarification. **Mary Vandebosch** replied that as far as she could tell, it was essentially rejecting a couple of the House amendments and reinserting language that had been taken out by the House. That would be within the scope of the conference committee.

**Substitute Motion:** **SEN. TOOLE** moved that **SB 242 BE AMENDED** with Amendment #1 (**EXHIBIT 1**).

**Vote:** Motion failed 2-4 with Senator Toole and Rep. Tropila voting yes.

**CHAIRMAN MAHLUM** suggested that since the committee had just received the amendments, it would be good to break and meet again after they had a chance to look over the amendments. They would adjourn till 4-10-01 at 2:00 p.m. in Room 350.

**REP. HAINES** objected and asked for a vote on his motion. He felt they had discussed everything sufficiently.

**SEN. TOOLE** asked to recess and meet again.

**REP. HAINES** further asked that if they should meet tomorrow and more amendments would come forward, would the committee continue to meet.

**CHAIRMAN MAHLUM** replied no. He then stated that the committee would meet on 4-10-01 at 2:00 p.m. in Room 350 to finalize their actions.

*{Tape : 1; Side : B; Approx. Time Counter : 0 The tape was started a little past the starting point of 0.0}*

The Conference Committee started their meeting at 2:00 p.m. on 4-10-01 in Room 350.

**CHAIRMAN MAHLUM** called the conference committee to order on

SB 242. He mentioned the amendments that had been brought forward yesterday by the Building Codes Division. He called for comments.

**Motion:** Rep. Haines moved that **SB 242 DO PASS AS AMENDED by the House.**

**Discussion:**

**Substitute Motion:** Rep. Tropila made a substitute motion to accept **SB 242** as it had come out of the Senate.

**Vote:** Motion failed by 2-4 with Rep. Tropila and Sen. Toole voting yes.

**Discussion:**

**REP. HAINES** called for the question on his motion to accept the bill with the House amendments.

**Vote:** Motion carried 4-2 with Rep. Tropila and Sen. Toole voting no.

**ADJOURNMENT**

Adjournment: 3:00 P.M.

---

SEN. DALE MAHLUM, Chairman

---

MARY GAY WELLS, Secretary

DM/MGW